ORIGINAL

No. 96-1079

Supreme Court, U.S.
FILED
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In The

Supreme Court of the United States

October Term, 1996

JOHANNA TREVINO, a minor,

Petitioner,

v.

DARYL GATES, et al.,

Respondents.

On Petition For Writ Of Certiorari
To The Court of Appeals
For the Ninth Circuit

MOTION TO PROCEED *IN FORMA PAUPERIS* IN REPLY [AND REPLY]

STEPHEN YAGMAN
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8 pp

Petitioner, Johanna Trevino, a minor, moves the Court for an order that she be permitted to proceed *in forma pauperis* in submitting her brief in reply to the opposition to her petitition for certiorari. Her motion is based on the following declaration of her counsel of record, Stephen Yagman.

DECLARATION OF STEPHEN YAGMAN

I, Stephen Yagman, declare the following to be true under the penalty of perjury, pursuant to 28 U.S.C. 1746, on the date set forth at my signature, below.

1. I am an attorney admitted to practice law before this Court, and I am the petitioner's counsel of record in this proceeding.

2. The petitioner is a seven-year-old child, who resides in Quintana Roo State, Mexico, and who is an American citizen.

3. Petitioner's father was killed by some of the respondent Los Angeles police officers herein on February 12, 1990, and petitioner was born six days after her father was killed.

4. Since that time, petitioner has acquired no property or assets, and owns no real or personal property of any kind, and lives in abject poverty.

5. The only assets petitioner has are the judgments in this action, but those judgments have not been tendered and accepted.

6. Petitioner is a pauper as that term is used in its legal meaning.

Stephen Yagman

STEPHEN YAGMAN 02/16/97

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JOHANNA TREVINO, a minor,

Petitioner,

v.

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Respondents.

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BRIEF IN REPLY

STEPHEN YAGMAN
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In reply to the brief in opposition to her petition for certiorari, petitioner makes the following points:

1. It is not correct, as contended in the brief in opposition, that the judgment for compensatory damages was tendered and accepted by petitioner. Also, it is not correct that the judgment for punitive damages was tendered and accepted. In fact, though demand was made for the punitive damages, and though abstracts of judgments were issued and recorded against respondents against whom the punitive damages were awarded, and notwithstanding the expiration of a stay on enforcement of the punitive damages judgment and the denial of a motion in the district court for an additional stay of enforcement of the punitive damages judgments, the punitive damages have not been tendered.

2. Respondents wholly disregard, and therefore should be deemed to have conceded, petitioner's main argument on this petition, to wit: the payment of punitive damages awarded against a police officer in a Section 1983 action for police brutality by the local government entity who employs that police officer subverts the purpose of an award of punitive damages in a Section 1983 action.

3. Respondents also wholly disregard and do not mention, address, or discuss the *Derechin* case cited and discussed at length in the petition, for the proposition that federal courts have the inherent power to determine who must pay sanctions levied by a federal court, and, by logical extension, punitive damages awarded in a federal court. Respondents should be deemed to have conceded this point.

4. The issue presented by the petition was raised below to the extent that was possible, given the prior adverse decision on the same issue by the court below, that the same issue previously was denied certiorari by this Court should have no bearing whatever on whether this Court now, on the facts of this case, grants certiorari, and the petition presents an issue with substantial and significant merit.

5. Any policy consideration that might counsel this Court not to preempt California's punitive damages indemnification statute in this case significantly is outweighed by the ideas that: (1) payment of punitive damages awarded against police by local governments with taxpayer funds wholly undermines the purposes of federal civil rights laws and places the consequences of reprehensible police conduct on powerless and hapless taxpayers; and, (2) federal law, and not state law, of damages must control the outcome of who bears the sting of an award of punitive damages in a federal civil rights action. Otherwise, a state will have been permitted to nullify and/or to have diluted the measure of an important federal remedy.

6. Conclusion:

For all of the reasons set forth in the petition, and notwithstanding the material set forth in the brief in opposition, petitioner respectfully requests that the petition be granted.

Dated: February 16, 1997.

Respectfully submitted,

STEPHEN YAGMAN
MARION R. YAGMAN
YAGMAN & YAGMAN, P.C.
RAMSEY CLARK
LAWRENCE W. SCHILLING
GEORGE C. PRATT

Attorneys for Petitioner

DECLARATION OF SERVICE

I am employed in Los Angeles County, California by a member of the Bar of this Court at whose direction the service declared herein is made, am over the age of 18, am not a party to the within action, and my business address is 723 Ocean Front Walk, Venice, California 90291. On the date set forth on the signature line below, I served the preceding papers on all interested parties whose names and whose addresses are listed below the signature line, by placing true copies thereof enclosed in sealed envelopes with full postage thereon fully prepaid in the United States mail at Los Angeles, California.

I declare the foregoing to be true under the penalty of perjury at Los Angeles, California on the date stamped on the signature line, below.

Stephen Yagman 02/17/97

SIGNATURE DATE

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